

burden of proving that her actions were, in fact, a flagrant neglect of duty. (Allegheny Ex. 3, Pp. 13-14).

34. Arbitrators often deny or limit requested relief, notwithstanding the merits of the original complaint, where the grievant has resorted to self-help rather than to the grievance procedure. An important exception to the general rule of "obey and grieve" exists where obedience to orders would involve an unusual health hazard or similar sacrifice. However, such exceptions are viewed quite narrowly and must be supported by clear and convincing evidence. The Employer has raised some substantial questions as to the existence of this health hazard exception offered by the grievant. However, other possible exceptions to the duty to obey orders exist under circumstances where the order commands the performance of an immoral act, or would humiliate the employee or invade some personal right which is considered inviolable. Therefore, let us closely examine the events that transpired within to determine whether such an exception exists. (Allegheny Ex. 3, P. 14).

35. I agree with the argument put forth by the Employer that the individuals involved in this grievance are in the entertainment business, which differs considerably from the normal industrial work environment. It is also clear that the grievant was required to be involved in banter and interplay with the other on-air talent. I believe that the grievant

knew of and accepted the fact that she must participate to some degree in this type of arrangement. The evidence also reflects that the grievant willingly participated in the "banter" at various times even to the degree that during the program on Halloween she wore a revealing/risque costume to work. (Allegheny Ex. 3, Pp. 14-15).

36. However, I find that the banter/interplay the grievant was subjected to (as detailed in the Background section of this opinion) goes well beyond anything that could even remotely be considered part of one's job requirement. The jokes and suggestive remarks that were directed to her were lewd, offensive, sophomoric, in bad taste and beyond anything that an employee should have to be subjected to--even if they are part of an "entertainment vehicle". Fortunately or unfortunately (depending on one's perspective) the First Amendment protects such forms of expression from censorship. Constitutional protections, however, do not mean that an individual of reasonable sensibilities must be unwillingly bombarded or subjected to such forms of free speech, at least not as a mandated job requirement or within the confines of one's work environment. I find a parallel exists in this situation with circumstances that precipitated and are now governed by the Federal Government's Sexual Harassment Laws. An employee no longer has to put up with a hostile work environment that is created on the basis of sex, be it in the

form of jokes, comments, suggestions, touching, etc. (Allegheny Ex. 3, P. 15).

37. I am sure that on the occasions the grievant willingly participated in some mild risque bantering, she did so either because she wanted to or, as is more often the case, because she wanted to fit in and go along with the crowd. Such participation, however, in no way waives her right to object to the extremely outrageous remarks publicly directed to her nor makes her fair game for such insults. One must keep in mind these comments were not just made around the office or shop floor, as is normally the case. They were publicly broadcast to the thousands of people who listen to "The Quinn and Banana Show". The Employee argues that the highly suggestive remarks of the disc jockeys continued for quite some time, so one must question why the need for self-help arose at this point and why a grievance was not filed earlier. I believe one very plausible explanation exists, i.e., the vile and filthy joke perpetrated upon the grievant on January 22, 1988, was, in fact, the straw that broke the camel's back. (Allegheny Ex. 3, Pp. 15-16).

38. There is no question, under these circumstances, that the grievant's action of walking off the job was not only understandable, but more importantly, was justifiable. The conduct on the part of the disc jockeys was degrading, humiliating and a serious invasion of her personal rights and

dignity. I would find it unreasonable to require the grievant to have remained on the job after being subjected to such vile and lewd insults and be expected merely to file a grievance. These circumstances are a narrow exception to the self-help rule and justify the grievant's actions. (Allegheny Ex. 3, P. 16).

39. Finally, I believe that the Employer was aware of or at least strongly suspected the grievant's negative reaction to these on-going lewd comments because of the general manager's reaction to the situation on the morning of January 22, 1988. When arriving at the station and learning that the grievant walked off in anger, the general manager did something I view as extremely drastic and unusual. He immediately pulled the two disc jockeys off the air. I find it very strange that he would abruptly stop an on-going program over an incident that the audience was certainly not aware of, and under circumstances where his investigation could have waited until the program was over. In fact, by abruptly stopping the program, the general manager is certainly sending a message to the audience that something was wrong, under circumstances where there was no immediate need to even hint that trouble existed. This implies to me that he knew of the on-going seriousness of the situation and the tension between the grievant and the disc jockeys, and he

realized the time had finally come when the straw broke the camel's back. (Allegheny Ex. 3, P. 17).

AWARD

40. The grievance is sustained. The grievant is to receive payment for all severance benefits to which she is entitled together with interest at the rate of 6% per annum from February 5, 1988.

DATE: November 16, 1988
Pittsburgh, Pennsylvania

Ronald F. Talarico
Arbitrator"
/s/

(Allegheny Ex. 3, P. 18)

41. The Arbitration opinion and award was upheld in a proceeding entitled EZ Communications, Inc., WBZZ-FM, Plaintiff vs. American Federation of Television and Radio Artists (Civil Action 88-2636). In the United States District Court For The Western District of Pennsylvania. The court opinion and order are set forth in paragraphs 42-54 below, as follows:

42. "EZ Communication, Inc. WBZZ-FM brings this action pursuant to Section 301 of the Labor Management Relations Act,

as amended, 29 U.S.C. §185, to vacate the award of an arbitrator that granted severance pay to Elizabeth Randolph, a former news director at WBZZ-FM, the radio station owned and operated by EZ Communications. See Plaintiff's Exhibit E. The American Federation of Television and Radio Artists, a labor organization and party to a collective bargaining agreement with EZ Communications, represented Randolph in her claim for severance pay. (Allegheny Ex. 4, P. 2).

43. Randolph was employed by plaintiff as a news director for WBZZ-FM from 1985 until January 1988. Her duties included reading the news twice during each hour of "The Quinn and Banana Show", a morning radio show featuring disc jockeys and local radio personalities, Jim Quinn and "Banana" Don Jefferson. It is common practice for disc jockeys to engage in humorous exchanges with various reporters on the shows and Quinn and Banana often joked with Randolph while on-the-air. However, in 1986, Quinn and Banana began to recite tasteless, sexual quips about Randolph on-the-air while she was on vacation. The statements suggested that Randolph was sexually promiscuous and that she had sexually transmitted diseases, albeit in a joking manner. (Allegheny Ex. 4, Pp. 2-3).

44. As a result of the outrageous jokes directed at her, Randolph experienced anxiety attacks, difficulties in functioning on-the-air and working with Quinn and Banana in general. She was eventually admitted to a hospital due to the

emotional trauma she suffered as a result of the ridicule. Thereafter, the on-the-air joking included jokes concerning Randolph's mental status suggesting that she was instable, in addition to suggestions that she was sexually indiscriminate. (Allegheny Ex. 4, P. 3).

45. Attempts by Randolph to bring this shoddy treatment to an end by discussing her displeasure with superiors at the station were ineffective. Finally, on January 22, 1988, during the "Friday Morning Joke-Off" segment of the "Quinn and Banana Show", a disc jockey from a sister station to WBZZ-FM in St. Louis, Missouri, called the station on-the-air and made Randolph the butt of his joke, which referred to oral sexual activity in an offensive manner. The joke was played back for Randolph by Quinn or Banana just before she was to do a news report on their show. Randolph became too distraught to perform and left the station. (Allegheny Ex. 4, Pp. 3-4).

46. Later that day, Randolph returned to the station to resume her news duties, but she was placed on leave of absence pending an investigation. One week later, Randolph's employment was terminated for flagrant neglect of duty related to her sudden departure from the station on January 22, 1988. As a result of her termination for what plaintiff alleges to be just cause under the collective bargaining agreement, plaintiff denied the claim of Randolph for severance pay. (Allegheny Ex. 4, P. 4).

47. Presently before the court are the cross motions of the parties for summary judgment. EZ Communications contends that the arbitrator exceeded his authority in numerous respects. Defendant disagrees. In keeping with well established principles of federal labor law, the arbitrator's award must be sustained so long as it "draws its essence from the collective bargaining agreement." Graphic Arts International Union v. Haddon Craftsmen, 796 F. 2d 292, 694 (3d Cir. 1986). (Allegheny Ex. 4, P. 4).

48. The arbitrator interpreted the relevant portions of the collective bargaining agreement as an agreement by the employer to pay announcers severance pay unless the employee is guilty of "flagrant neglect of duty, drunkenness, dishonesty or other serious cause." Plaintiff's Exhibit E at 10; Plaintiff's Exhibit A, Schedule 1, B. Staff Working Conditions at ¶7. (Allegheny Ex. 4, P. 4).

49. EZ Communications does not dispute the interpretation of the agreement in this regard. Rather, plaintiff asserts that Randolph is not entitled to severance pay because the act of leaving the premises of WBZZ-FM on January 22, 1988, without performing newscasts, constituted a flagrant neglect of her duties and that, if she felt that she was being subjected to sexual harassment on the job, she was required to file a formal grievance rather than resort to self help by walking off the job. (Allegheny Ex. 4, Pp. 4-5).

50. The arbitrator disagreed with plaintiffs' characterization of Randolph's conduct of January 22, 1988, for which she was terminated. He found that "...I would find it unreasonable to require the grievant to have remained on the job after being subjected to such vile and lewd insults and be expected merely to file a grievance." Plaintiff's Exhibit E at 13. (Allegheny Ex. 4, Pp. 5-6).

51. An arbitrator exceeds his authority whenever he substitutes his own notions of industrial justice for the terms of the parties' agreement. Pennsylvania Power Company v. Local Union #272 of the International Brotherhood of Electrical Workers, AFL-CIO, No. 89-3036 (3d Cir. September 22, 1989). In our view, the arbitrator had authority bottomed in the bargaining agreement to find that the act of walking off the job was neither a flagrant neglect of Randolph's employment duties nor was she required to file a formal grievance to protest the degradation to which she was exposed as a result of the insensitivity of other employees of plaintiff. (Allegheny Ex. 4, Pp. 5-6).

52. The Supreme Court has defined our meager authority to review the award of the arbitrator, under the circumstances:

Courts...do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts. To resolve disputes about the application of a collective bargaining agreement, an arbitrator must find facts and a court may not reject those

findings simply because it disagrees with them. The same is true of the arbitrator's interpretation of the contract. The arbitrator may not ignore the plain language of the contract; but the parties having authorized the arbitrator to give meaning to the language of the agreement, a court should not reject an award on the ground that the arbitrator misread the contract.

United Paperworkers International Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 38 (1987). (Allegheny Ex. 4, P. 6).

53. While EZ Communications argues that the arbitrator exceeded his authority in issuing the award, we find that plaintiff is in fact seeking a review of the merits of the award which was based on a reasonable interpretation of the contract. Id. at 36. The arbitrator properly interpreted the contract and implied that interpretation to the facts presented. If we were to second guess his reasonable construction, we would exceed our authority and scope of review. Id.; See also United States Postal Service v. National Association of Letter Carriers, 839 F. 2d 146 (3d Cir. 1988). The motion of plaintiff for summary judgment will be denied, and the defendant's motion will be granted. (Allegheny Ex. 4, Pp. 6-7).

54. A written order will follow.

ORDER OF COURT

AND NOW, this 16th day of October, 1989,

IT IS ORDERED that the motion of plaintiff for summary judgment be and hereby is denied;

IT IS FURTHER ORDERED that the motion of defendant for summary judgment be and hereby is granted."

Donald E. Ziegler
United States District Court
/s/

(Allegheny Ex. 4, Pp. 7-8).

H. Renewal Expectancy--WBZZ Programming

55. During the seven-year license renewal period at issue here, there was broadcast on WBZZ the following programming:

News - WBZZ broadcast three-minute newscasts on Monday through Friday during the following drive-time hours: 5:57 a.m., 6:27 a.m., 6:57 a.m., 7:27 a.m., and 8:57 a.m. These were produced by the station's News Director, who has part-time help. There was then no regularly-scheduled newscasts on

WBZZ until 12:57 a.m., when a three-minute newscast, which was pre-recorded in the late afternoon, was broadcast. This pre-recorded newscast was also played back all night, at 1:57 a.m., 2:57 a.m., 3:57 a.m., and 4:57 a.m. No newscasts were broadcast on Saturday morning or on Sunday morning. On weekends there was the same schedule of overnight newscasts. There was thus fifteen minutes a day of news during morning drive time for a total of seventy-five minutes per week. The overnight newscasts (fifteen minutes per day, seven days per week) comprised one hundred five minutes per week. There was thus a total of one hundred twenty-nine minutes (three hours) per week of news. There was also seventy-two minutes of weather per week, for a total of news and weather of four hours and 12 minutes per week. (Tr. 238-241, WBZZ Ex. 2, Page III).

56. Public Affairs and Other Programs

During the renewal period, a block of programming was broadcast from 4 a.m. to 8 a.m. on Sunday morning. With the general exception of one station-produced program, Dialogue, early Sunday morning block consisted of programming not produced by WBZZ, but furnished the station by other entities,

primarily religious organizations. Thus, the Southern Baptist Radio and TV Commission furnished the following Sunday morning programs: Master Control (14 segments), which included popular tunes; On Track (237 segments), which included religious guidance and light music; Powerline (270 segments) which included contemporary music; and Streams in the Desert (204 segments), which also included contemporary music. Other Sunday morning religious programs were provided by the Presbyterian Church, Open Door (61 segments), contemporary music poetry and prose with a Christian outlook) by the Lutheran Church, Scan (261 segments), which included contemporary and religious music, and the Larry Black Show (2 segments) which included religious and contemporary hit radio music. EZ asserts that these various programs include community issue material as well as music and religious thought, but there was no breakdown on the WBZZ program logs between music and other material, and thus it is not possible to determine how much of such programming did in fact address issues of public importance. EZ's exhibits, in their calculation of their claim to issue-related programming, counted the full duration of such programming, even though there was no competent evidence as to how much of such programming was music or religious guidance. (Tr. 218-225, WBZZ Ex. No. 2, Pp. ii-III, vi-xii, xv, xx).

57. In addition to Dialogue, (490 sixty-minute segments) there were broadcast over WBZZ the following programs which appear to contain issue related material: Agricultural USA (21 fifteen-minute segments), American Focus (231 thirty-minute segments), Healthcare 139 thirty-minute segments), Mental Health Matters (16 15-minute segments), Prime Time (11 15-minute segments), The Reviewing Stand (24 thirty-minute segments and Views of the News (13 fifteen-minute segments). The total of these programs (other than Dialogue) comprise some 143 hours of programming, which over the course of the seven-year renewal period amounts to an average of some twenty-four minutes a week of such programming. (WBZZ Ex. No. 2, Pp. vi-ix).

58. There was broadcast on WBZZ a feature entitled Pittsburgh Opinion, which consisted of one-minute comments by the public in response to questions on a wide variety of topics, with the largest number of such questions relating to culture and recreation, entertainment, and sports. EZ asserted that there were an average of 68 Pittsburgh Opinion segments per week, notwithstanding memoranda from a former WBZZ Program Director stating that Pittsburgh Opinion was broadcast 32 times per week. (WBZZ Ex. No. 2, Pp. x, xxiv-xxxv, Allegheny Exs. No. 23 and 24, Tr. 226-237). It was WBZZ policy during the renewal period to broadcast one Public Service Announcement (PSA) per hour, although the WBZZ program

logs shows identifiable PSA's for about two-thirds of the hours during the renewal period. (WBZZ Ex. No. 2, P. ii).

59. EZ presented the declarations of several persons involved with various community organizations in Pittsburgh whose events and campaigns, primarily charitable or health-related, were the subject of WBZZ PSA's and promotional announcements, and assistance by WBZZ staff members. EZ presented no declarations from any minority or ethnic groups or organizations. Allegheny presented the declaration of Ms. Lois McDonald, the chairperson of the Communications Committee of the Pittsburgh Chapter of the National Association for the Advancement of Colored People (NAACP), and chairperson of the Pennsylvania State NAACP. For the past ten years, Ms. McDonald has been involved in monitoring radio and television stations in the Pittsburgh area, including WBZZ. It was Ms. McDonald's opinion that WBZZ has not offered programming of interest to the local African-American Community, and its programming does not cover issues of importance to such community. Allegheny also presented the declaration of Robert L. Pitts, the Mayor of Wilkinsburg, a borough which borders the city of Pittsburgh. Mayor Pitts, who has resided in Wilkinsburg since 1979 and has been Mayor since January, 1990, pointed out that he had never been contacted by WBZZ with regard to news, public affairs or any type of programming. According to Mayor Pitts, "Insofar as the real and pressing

needs of my area are concerned, WBZZ is a non-factor..." (Allegheny Ex. No. 9, Pp. 1-3, and No. 13, WBZZ Ex. Nos. 1A-1Q).

60. It was EZ policy for WBZZ to broadcast six percent (6%) per week of non-entertainment programming. The locally-produced program Dialogue was broadcast at what the station General Manager considered the best time available on Sunday mornings, which was seven to eight a.m. (Tr. 242-245).

I. Auxiliary Power

61. EZ has auxiliary power facilities for its co-located transmitter site and studios. Allegheny proposes auxiliary power sources at its studios and transmitter site. (WBZZ Ex. No. 7; Allegheny Ex. No. 2, P. 3)

III. Proposed Conclusions of Law

A. Diversification of Media

1. Under the comparative evaluation, principal significance is attached to an evaluation of the respective media interests of the applicants. Neither Allegheny nor any of its shareholders have any media interests, whereas EZ has substantial broadcast interests. The weight to be accorded Allegheny's preference thus turns on an assessment of EZ's broadcast interests.

2. Of critical significance is EZ's relationship to FM station WQKB, which is licensed to the Pittsburgh suburb of New Kensington. The principal community contours of the two stations overlap, and the primary service contour of WQKB is encompassed within the primary service contour of WBZZ. EZ has a time brokerage agreement with WQKB whereby EZ produces 156 to 160 hours per week of WQKB programming per week, including all of the WQKB entertainment programming as well as the news programming broadcast over WQKB (See Findings, Pars. 5, 7). Commission Rule 73.3555(a)(2)(i) provides in pertinent part:

"Where the principal community contours of two radio stations overlap and a party (including all parties under common control) with an attributable interest in one such station brokers more than 15 percent of the broadcast time per week of the other such station, that party shall be treated as if it has an interest in the brokered station subject to the limitations set forth in paragraphs (a) and (e)

of this section. This limitation shall apply regardless of the source of the brokered programming supplied by the party to the brokered station." (emphasis added)

Since EZ provides well over ninety percent (90%) of WQKB programming, it is clear that EZ is to be treated as having an interest in WQKB.

3. In addition to the applicability of the Commission's attribution rule for time brokerage, the particular facts of EZ's relationship to WQKB enhance its accountability under the diversification criterion. EZ employees who program WQKB include a Program Director, who supervises a full-time news person and an announcing staff of eight persons, all EZ employees. The EZ Program Director for WQKB reports to the WBZZ General Manager. An EZ employee serves as Promotion Director for WQKB. EZ markets WQKB, with an EZ sales staff of five persons. The WBZZ general sales manager and the WBZZ local sales manager also supervise such time sales for WQKB. The WBZZ General Manager handles the national advertising for WQKB. EZ offers combination rates for advertisers who purchase time on WBZZ and WQKB. EZ employees provide business administrative and traffic services for WQKB. EZ employees thus not only provide virtually all WQKB programming, but market and promote the station and handle all times sales and the business administration of such sales.

4. A particularly telling aspect of EZ's authority over WQKB was the change in format. At the time EZ entered its

time brokerage agreement, the call letters of the New Kensington station were WMXP and its format was contemporary hit radio. WBZZ also has a contemporary hit radio format. Under the time brokerage agreement, the call letters of the station were changed to WQKB, and, most significantly, the format was changed to country. This change in format served to remove the format competition posed by the New Kensington station. (Findings, Par. 6).

5. It is also noteworthy that at the time EZ entered into its time brokerage agreement, EZ also entered into a contract to purchase the New Kensington station. Under the agreements, EZ pays the licensee of WQKB a fixed monthly payment of over \$83,000, and eighty-five percent (85%) of such payments applies to the purchase price of the station. EZ also assumed the lease for the majority of the studio space that the New Kensington station occupied. (Findings, Par. 7).

6. Within the context of Commission Rule 73.3555(a)(2)(i) and the particular facts of EZ's existing relationship with WQKB, that station is fully attributable to EZ. This is of critical significance by reason of a long line of Commission precedent holding that where one applicant has no media interests and the other applicant has a station within the service area of the proposed station, the non-media holding applicant receives a substantial diversification preference. See, for example, Ramon Rodriguez & Associates,

4 FCC Rcd 6817, 66 RR 2d 1878 (Rev. Bd. 1989) where one of competing applicants for a new FM station owned a standard broadcast (AM) station in a nearby market. The Board articulated the basic Commission policy as follows:

"The Commission expressly prefers two 'voices' rather one when given that choice, and here, where Ortiz's existing full-service station is located in an adjacent community within the very service area in question, Rodriguez's diversification preference must be deemed substantial." 4 FCC Rcd 6819, 66 RR 2d 1881."

In accord, as to the substantial diversification preference arising where one applicant has other market media interests, see Hugh M. McBeath, 103 FCC 2d, 59 RR 2d 1159 (Rev. Bd. 1986); Hampshire County Broadcasting, Inc., 99 FCC 2d 600, 57 RR 2d 463 (Rev. Bd. 1989), WIOO, Inc., 95 FCC 2d 974, 54 RR 2d 1291 (1983), and Communications Properties, Inc., 92 FCC 2d 45, 52 RR 2d 981 (Rev. Bd. 1982). These cases underscore that the diversification preference is so substantial that it outweighs preferences for an unusually good past broadcast record and integration (Hampshire County and Communications Properties, supra) and that it applies in a comparative renewal case (WIOO, supra).

7. It should also be emphasized that the above cases typically involved an applicant whose existing interests were in another service. Here, the preference is even stronger since WQKB is in the same FM service as the frequency at issue

here. While the Commission's Rules now permit the programming of two FM stations in a market, the comparative differentiation remains. Moreover, the comparative factor is here heightened by the fact that EZ changed the format of its second FM station in the market, which reduced competition with the parent station WBZZ. There is thus an anti-competitive aspect here which is the very antithesis of the goals of the diversification criterion.

8. EZ also has substantial media interests other than WBZZ and WQKB which impact on the diversification analysis. Specifically, there are attributed to EZ through present ownership or ownership as of the cut-off date of eleven other FM stations, ten which are Class B or Class C facilities, and four standard broadcast stations, all of which are full-time facilities. One of the FM stations, WIOQ, is in the same state as Pittsburgh. These several other broadcast interests further enhance the diversification preference for Allegheny, see Isis Broadcasting Group, FCC 93-441, released September 24, 1993 and F.E.M. Ray, Inc., 7 FCC Rcd 4606 (1992). The totality of EZ's broadcast interests as contrasted with no such existing interests for Allegheny provides Allegheny with a diversification preference which is more than substantial.

B. Best Practicable Service

9. With respect to the comparative criterion of best practicable service, there was no comparative coverage issue and both applicants have provided for auxiliary power sources. The differentiation under this criterion thus turns on integration of ownership in management. Allegheny is credited with the full-time integration commitment of Herbert E. Long, III, a five percent (5%) stockholder. As Business Manager of the proposed station, Mr. Long will supervise all financial aspects of the station's operation, including budget and financial planning, the sales and promotion staff, and the accounting staff. He will also supervise the station's Equal Employment Opportunity Program. Mr. Long will advise and consult with the General Manager as to the programming policies and decisions. Mr. Long's qualitative enhancements include his status as an African-American and his commitment to re-locate to Pittsburgh to fulfill his integration pledge. (Findings, Par. 11).

10. The only EZ shareholder with full-time integration is the General Manager Edward Meyer, who supervises the day-to-day operation of both WBZZ and the EZ employees working with WQKB. Mr. Meyer owns 5,600 shares of EZ Class A shares, each of which shares has one vote per share. There are 6,102,297 shares of the Class A stock outstanding. EZ also has Class B shares, of which there are 2,777,897 shares

outstanding, and each share of the Class B stock has ten votes per share, with the Class B shares thus comprising 27,778,970 of the voting rights in the corporation. Total EZ votes are 33,881,267. (Findings, Pars. 1, 10). Mr. Meyer's shares thus constitute an infinitesimal .00016539%. Indeed, Mr. Meyer's ownership is so de minimis that even on the Hirschman-Herfindahl Index (HHI) scale of a possible 10,000, it barely registers, achieving a negligible 1.653 points.³ In contrast, Allegheny's HHI score is 500, a considerable differential.⁴

11. Other than the full-time integration described above, neither Allegheny nor EZ has any other cognizable integration. Allegheny President and shareholder Herbert E. Long, Jr., will devote time to general oversight in the construction, staffing, and operation of the station and while such time may be substantial, particularly in the initial phases of construction and operation, Allegheny does not assert that such time would average twenty hours per week over an extended period of time. (Findings, Par. 12). Similarly, EZ stockholders Alan Box and Arthur Kellar generally supervise WBZZ, but neither spends more than five hours per week on EZ's Pittsburgh operations (Findings Par. 10). It remains the

³ As prescribed in Omaha TV, Inc., 4 FCC Rcd 730, 734, 65 RR 2d 1019, 1036 (1988), the formula for EZ is $100 \times \frac{40}{40} = 10,000$
 $\times .00016823 = 1.65283$

⁴ The formula for Allegheny is $100 \times \left(\frac{40}{40} \right) = 10,000 \times .05 = 500$.

Commission rule that part-time credit will not be accorded to integration of less than twenty hours per week. Woods Communications Group, Inc., 7 FCC Rcd 78, 70 RR 2d 707 (1992). Accordingly, neither Allegheny nor EZ can receive part-time integration credit.

12. The standard for evaluation of credited integration was set forth by the Commission in Miracle Strip Communications, Inc. 4 FCC Rcd 5064, 66 RR 2d 1444 (1989) as follows:

"...where the difference between two applicants equals or exceeds 1250 under our new integration index, we will consider that a sufficiently clear qualitative difference that we will not look beyond that difference to consider qualitative enhancement factors. On the other hand, where the difference between competing applicants is less than 1250, we will proceed to consider qualitative factors in order to determine which applicant will better serve the public interest." 4 FCC Rcd 5066.

A question arises as to the correct application when one applicant (Allegheny) has 5% integration with an index score of 500 and the other applicant has an index score of only 1.653, which on a scale of 10,000 is so minute as to be the functional equivalent of zero. In this connection, it is relevant that in Miracle Strip and in all the cases cited therein at 4 FCC Rcd 5065-66, the differentials under consideration were between applicants who had cognizable index scores. There were no cases where one applicant had in effect zero integration. This distinction is critical here since if

one applicant has 100% full-time integration (10,000 index points) and another applicant has 95% full-time integration (9,500) the 5% (500 points) differential is not dispositive since one applicant has 95% as much as the other. Here, in contrast EZ (1.653 points) has less than one-half of one percent of Allegheny's 500 points. This is a substantial difference, warranting a quantitative advantage to Allegheny. Since Allegheny's integrated shareholder also has minority status⁵ and proposes to move to the city of license, these enhancements, combined with the substantial ratio of difference, entitles Allegheny to a slight preference on integration and for best practicable service.

C. Renewal Expectancy--Compliance with Rules and Policy

13. A licensee is expected to comply with the Commission's Rules and Policies. Failure to do so reflects directly upon the renewal expectancy criteria. See EZ Communications, Inc., (FCC 93-513) released herein December 6, 1993. There has been an adjudication of sexual harassment and discrimination against EZ involving employees and management at WBZZ during the license renewal period. The facts were determined by an Arbitrator (Findings, Pars. 14-40), and the

⁵ As to the continuing significance and rationale for awarding preference for minority status for integrated owners, see Metro Broadcasting Inc. v. Federal Communications Commission, 110 S Ct. 2997, 67 RR 2d 1353 (1990)